IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.624 of 2000.

Date of decision: September 24th, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Mohinder Singh. ……. Respondent.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr.V.K. Verma,Addl. Advocate General.

For the Respondent: Mr.Praneet Gupta, Advocate, vice Mr. Neeraj Gupta, Advocate.

Surinder Singh, J (oral):

The respondent was put on trial and acquitted by the learned Judicial Magistrate, for the offence under Section 279 of the Indian Penal Code, pursuant to the FIR No.37/97, registered in Police Station, Haripur.

The state having felt aggrieved and dissatisfied with the impugned judgment of acquittal has filed the instant appeal on the ground that the learned trial court has decided the matter in a slip-shod and perfunctory manner and unrealistic standards to evaluate the direct and cogent evidence of the prosecution were set which has resulted in the miscarriage of justice. Since the reasoning given by the trial court for acquittal of the respondent is unreasonable and unsustainable, the appeal deserves to be accepted.

I have heard Shri V.K. Verma, learned Additional Advocate General and Shri Praneet Gupta, learned counsel for the respondent and have carefully gone through the evidence on record.

Whether reporters of local Papers may be allowed to see the judgment? Yes.

In brief, the prosecution story is that on 15.12.1997, at about 7.20 p.m., the alleged offending bus was being driven by the respondent and was coming from the opposite side of the Maruti Van of the complainant (PW3). There was slight curve. On seeing the bus, complainant stopped his Van, but the back portion of the bus had hit the Maruti Van in its front side damaged door and the head light. The bus was carrying the passengers. While alighting some passengers on the spot by the bus driver, the complainant asked the accused about the damage caused by him to his Car, but in turn the driver of the bus told him that he did not have any time and told him to come to bus stand Kangra. Thereafter, the complainant went to the police post, Ranital and gave his statement Ext.PW3/A, under Section 154 of the Code of Criminal Procedure, on the basis of which FIR Ext.PW4/C was registered in Police Station, Dehra, under the aforesaid section.

The police started investigation. It visited the spot on 13.5.1997, prepared the site plan and took the photographs of the Taxi and on 14.5.1997, seized the bus, which was later released on supurdari by the Additional Chief Judicial Magistrate on 17.5.1997. The police had taken into possession all the documents of the bus in question. After recording statements of the witnesses and completing the challan, it was presented in the court for trial.

The respondent was charge-sheeted under Section 279 of the Indian Penal Code. He pleaded not guilty and claimed trial. To prove its case, the prosecution examined the complainant Hari Singh (PW3) and the alleged eyewitness Lekh Ran, Up-Pradhan (PW2) and the Investigation Officer S.I. Duni Chand (PW4).

The respondent was also examined under Section 313 of the Code of Criminal Procedure. His defence was that he was falsely

implicated in the case and at the relevant time, he was not driving the vehicle.

After going through the evidence on record and upon hearing the learned counsel for the parties, the learned trial court acquitted the respondent, on the ground that the evidence of the prosecution is contradictory and replete. The statement of the alleged independent witness (PW2) did not inspire confidence and also that the prosecution could not cogently prove that the respondent was driving the vehicle in question at the relevant time.

On the reappraisal of the evidence on record, apparently on the scrutiny of testimony of the complainant Hari Singh (PW3) I have found that he had half-heartedly supported the prosecution case, though he admitted the accident, but stated that he could not identify the respondent, but when he was declared hostile by the prosecution, he kept on admitting the suggestions put to him and in the cross-examination conducted by the defence, he again admitted that he could not properly identify the respondent at the relevant time. As far as the testimony of PW2 Lekh Raj, an alleged eye witness is concerned, it is not clear from the record as to who had supplied his name to the police that he had witnessed the alleged occurrence. He is Up-Pradhan of the Gram Panchayat and he has admitted that whenever the police required any witness, he offered his services. His very presence on the spot is doubtful. The complainant has also not stated in his statement Ext.PW4/C that he had witnessed that incident. Therefore, for the reasons aforesaid and in view of the contradictions, I find it difficult to accept the prosecution case. Thus I concur with the findings of the learned trial court. Therefore, the appeal filed by the State is dismissed.

The bail bonds of the respondent, entered upon at any stage during the proceedings of this case stand discharged. The matter is disposed of accordingly.

September 24, 2007. **(Surinder Singh)**
(PDS) **Judge**.